

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Robert Elguezabal,

Plaintiff,

v.

Mario E. Ramirez; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Plaintiff Robert Elguezabal complains of Defendants Mario E. Ramirez; and Does 1-10, ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property owners, business operators, lessors and/or lessees for Tacos La Estrella

1 Mexican Food restaurant ("Restaurant") located at or about 271 E. Foothill
2 Blvd., Rialto, California.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for
9 the events herein alleged, or is a necessary party for obtaining appropriate
10 relief. Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 4. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to pendant jurisdiction, an attendant and related cause of
19 action, arising from the same nucleus of operative facts and arising out of the
20 same transactions, is also brought under California's Unruh Civil Rights Act,
21 and the California Disabled Persons Act, which acts expressly incorporate the
22 Americans with Disabilities Act.

23 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 7. The plaintiff went to the Restaurant in January of 2015 to eat.

1 8. The Restaurant is a business establishment and place of public
2 accommodation.

3 9. Parking spaces are one of the facilities, privileges and advantages
4 offered by defendants to their customers at the Restaurant.

5 10. Unfortunately, although parking spaces are one of the facilities
6 available to patrons of the Restaurant, there were no compliant parking
7 spaces available for persons with disabilities. Instead, there were two parking
8 spaces ostensibly reserved for persons with disabilities that did not have any
9 kind of access aisles whatsoever. Plaintiff cannot use parking spaces with no
10 access aisle because he is worried about not being able to get back into his
11 vehicle if someone parks next to him.

12 11. Plaintiff alleges that there used to be accessible parking spaces in the
13 lot for persons with disabilities. Unfortunately, the access aisles
14 accompanying the parking spaces reserved for persons with disabilities have
15 faded or, more likely, been paved over. Because of defendants' lack of
16 maintenance and care, the accessible parking spaces are no longer available
17 for use by persons with disabilities.

18 12. Defendants have no policy or procedure in place to make sure that the
19 accessible parking spaces remain useable in the parking lot. As such, the
20 parking space reserved for persons with disabilities is no longer suitable for
21 use by plaintiff.

22 13. Men's restrooms are one of the facilities, privileges and advantages
23 offered by defendants to their customers at the Restaurant.

24 14. The men's restroom doorway clear passage width was 24 inches and
25 inaccessible to wheelchair users.

26 15. The restroom provides a toilet. However, instead of providing two grab
27 bars on adjacent or parallel walls for use by persons with disabilities who
28 need to transfer to the toilet, there is just one grab bar.

1 16. There is no clear floor space in front of the disposable toilet seat cover
2 dispenser because it is mounted on the wall behind the toilet.

3 17. The plaintiff personally encountered this problem. This inaccessible
4 condition denied the plaintiff full and equal access and caused him difficulty
5 and frustration.

6 18. Plaintiff would like to return and patronize the Restaurant but will be
7 deterred from visiting until the defendants cure the violation. Plaintiff lives
8 less six miles from the Restaurant, which makes its location very convenient
9 for plaintiff. He would like to return.

10 19. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 20. Given the obvious and blatant violations, the plaintiff alleges, on
14 information and belief, that there are other violations and barriers on the site
15 that relate to his disability. Plaintiff will amend the complaint, to provide
16 proper notice regarding the scope of this lawsuit, once he conducts a site
17 inspection. However, please be on notice that the plaintiff seeks to have all
18 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
19 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
20 he can sue to have all barriers that relate to his disability removed regardless
21 of whether he personally encountered them).

22 21. Additionally, on information and belief, the plaintiff alleges that the
23 failure to remove these barriers was intentional because: (1) these particular
24 barriers are intuitive and obvious; (2) the defendants exercised control and
25 dominion over the conditions at this location and, therefore, the lack of
26 accessible facilities was not an "accident" because had the defendants
27 intended any other configuration, they had the means and ability to make the
28 change.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

22. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

23. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix "D."
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 24. Any business that provides parking spaces must provide handicap
3 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
4 every eight of those handicap parking spaces but not less than one must be a
5 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
6 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
7 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

8 25. Here, the lack of compliant parking spaces is a violation of the law.

9 26. All doors to restrooms must have a minimum clear opening of 32
10 inches with the door open 90 degrees, measured between the face of the door
11 and the opposite stop. 1991 Standards § 4.22.2; 4.13.5; 2010 Standards §
12 404.2.3.

13 27. Here, the failure to provide the 32 inch wide restroom doorway
14 opening is a violation of the ADA.

15 28. For a toilet to be considered accessible under the ADA, there must be
16 two grab bars on walls adjacent to the toilet to assist persons with disabilities
17 to transfer to the toilet. 1991 Standards § 4.16.4; 2010 Standards § 604.5.

18 29. Here, the failure to provide two compliant grab bars is a violation.

19 30. Clear floor space that allows a forward or a parallel approach by a
20 person using a wheelchair shall be provided at controls, dispensers,
21 receptacles, and other operable equipment. 1991 Standards § 4.27.2; 2010
22 Standards § 309.2.

23 31. Here, the failure to provide such floor space is a violation of the law.

24 32. A public accommodation must maintain in operable working condition
25 those features of its facilities and equipment that are required to be readily
26 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

27 33. Here, the failure to ensure that the accessible facilities were available
28 and ready to be used by the plaintiff is a violation of the law.

1 34. Given its location and options, the Restaurant is a business that the
 2 plaintiff will continue to desire to patronize but he has been and will continue
 3 to be discriminated against due to the lack of accessible facilities and,
 4 therefore, seeks injunctive relief to remove the barriers.

5
 6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 7 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
 8 51-53)

9 35. Plaintiff repleads and incorporates by reference, as if fully set forth
 10 again herein, the allegations contained in all prior paragraphs of this
 11 complaint.

12 36. Because the defendants violated the plaintiffs' rights under the ADA,
 13 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
 14 Code § 51(f), 52(a).)

15 37. Because the violation of the Unruh Civil Rights Act resulted in
 16 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
 17 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
 18 55.56(a)-(c).)

19
 20 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
 21 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
 22 defendants) (Cal Civ. § 54-54.8)

23 38. Plaintiff repleads and incorporates by reference, as if fully set forth
 24 again herein, the allegations contained in all prior paragraphs of this
 25 complaint.

26 39. Because the defendants violated the plaintiff's rights under the ADA,
 27 they also violated the Disabled Persons Act and are liable for damages. (Civ.
 28 Code § 54.1(d), 54.3(a).)

1 40. Because the violation of the Disabled Persons Act resulted in difficulty,
2 discomfort or embarrassment for the plaintiffs, the defendants are also each
3 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
4 (c).)

5
6 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
7 and against all defendants)

8 41. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint.

11 42. The Defendants had a general duty and a duty arising under the
12 Americans with Disabilities Act and the Unruh Civil Rights Act and
13 California Disabled Persons Act to provide safe, convenient, and accessible
14 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
15 paragraphs, has caused injury and damage as alleged above.

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 Plaintiffs are not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act and/or the California
25 Disabled Persons Act which damages provide for actual damages and a
26 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
27 acts, simultaneously, and an election will be made prior to or at trial.

28 3.

1 4. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

3
4 Dated: February 16, 2015 CENTER FOR DISABILITY ACCESS

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6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
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